

**JEWELL LAW OFFICE**

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Albuquerque, New Mexico 87102

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Email

June 6, 2019

By USPS Mail and

By Email to:

Circle K Stores, Inc.  
c/o Lori Brown/Travelers Insurance Co.  
Constitution State Services, LLC  
PO Box 650293  
Dallas, TX 75265-0293

By Email to:

Protective Insurance Company  
James Walters  
111 Congressional Blvd #500  
Carmel, IN 46032

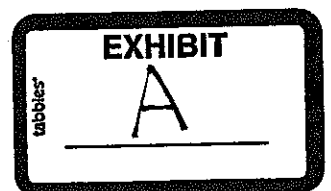
By Email to:

19<sup>th</sup> Capital/Quality Co.  
James Zender, Vice President and General Counsel  
9702 East 30th Street  
Indianapolis, IN 46229

**Re: Tim Weathers/ Circle K Stores, Inc.**

Dear Agents and Counsel:

As you all are aware, I represent Mr. Timothy Weathers. Mr. Weathers (dba Trustin Transportation, LLC) was the owner and operator of a 2015 Kenworth truck in which he visited the Corner Store/Circle K located at 385 Hwy 550, in Bernalillo, New Mexico on August 1, 2018. Mr. Weathers stopped at the store to fill up his rig with diesel fuel. On that day The Corner Store/Circle K erroneously misrepresented and sold to Mr. Weathers, other truckers, and the public, mislabeled gasoline which was negligently placed in its tank and pumps marked "Diesel". The events that have followed have wreaked havoc on my client's business, health, and personal life.



Plaintiff's damages grew when Plaintiff's insurer, Protective Insurance, unreasonably refused, with no regard to Plaintiff's interest, to fully and timely pay Plaintiff's claims for repair and downtime. Once a demand was made for downtime Protective admitted that Plaintiff was covered for downtime but has now refused to honor the acknowledged claim. 19th Capital/Quality caused further damages by not balancing theirs and Plaintiff's interests in accord with their business agreement culminating in repossession of Plaintiff's truck and an effective end to livelihood.

As a direct result of Circle K's, Protective Insurance's, and 19<sup>th</sup> Capital's negligence, breach of contract, and bad faith Mr. Weathers has suffered extensive damages. The damages continue to flow and accrue. Mr. Weathers has previously notified and filed a claim for his damages with both Circle K and Protective Insurance. Delayed and inadequate partial payment for repairs has been made as well as delayed and inadequate payment of approximately \$16,000.00 for "loss of use" damages which were improperly calculated by Circle K.

After Mr. Weathers filled his tank with the unleaded gasoline he left the Circle K headed south on I-25 heading to I-40 East. After traveling on I-40 for approximately 10 minutes the truck began acting erratically – sputtering, jolting and finally cutting out altogether. Luckily Mr. Weathers was able to navigate the truck to the TravelCenters of America ("TA"), about 12 miles outside of Moriarity, NM. At that point the truck would not start up again. A mechanic from the TA eventually examined the computer on the truck and charged Mr. Weather's \$120 for his services. The mechanic indicated that the computer was reset. However, when Mr. Weathers attempted to restart the truck it still would not run. The mechanic then came back, checked the fuel in the tanks and advised Mr. Weathers that he believed there was unleaded gas in the tank.

During the next eighteen days spent stranded in Albuquerque, Mr. Weathers made many attempts to contact the Corner Store/Circle K in Bernalillo where he had purchased the fuel. He was told that other truckers had also received the unleaded gas instead of diesel and that they had been compensated for their damages. He was also given erroneous contact information by Circle K employees he spoke with. Finally, around August 5<sup>th</sup> or 6<sup>th</sup> he was able to reach Lori Brown. The truck was towed to Inland Kenworth for repairs. Mr. Weathers was taken to a motel in Albuquerque where he stayed a few days, and then to another motel where he stayed until August 18<sup>th</sup> when he flew back home to Atlanta.

Once home in Georgia Mr. Weathers received a reimbursement check in the mail for his gas (\$240) and a check for his motel and Uber expenses in Albuquerque (\$969). His truck remained at Inland Kenworth in Albuquerque undergoing repairs. An invoice was produced by Inland Kenworth in the amount of \$18,927.61. Two payments were made by Protective Insurance to Inland Kenworth in the amounts of \$12,552.76 and \$2557.77 totaling \$15,110.53. A separate check for \$1,000 was made out to Mr. Weathers purportedly to cover his deductible payment. Circle K then reimbursed Protective Insurance in the amount of \$16,110.53. In sum there remained an outstanding balance of \$2,817.08 for the repairs. As you are aware, without his truck Mr. Weathers has been unable to continue his contract with Fed Ex, to make his weekly lease payments, and his other planned business ventures have fallen by the wayside.

Mr. Weather's settlement summaries with Fed Ex show an annual gross amount of approximately \$15,000.00 a month. Without a replacement for his truck Mr. Weathers has ended up with no income at all, and, because he was unable to make his truck payments, 19<sup>th</sup> Capital/Quality has terminated his lease. Mr. Weathers soon began to get behind on everything including necessary living expenses, i.e., rent, utilities, food, car insurance, gas, healthcare, etc. Naturally, Mr. Weathers soon became anxious and depressed over losing his truck, his current job, and his business.

As a direct result of Circle K, Protective, and 19<sup>th</sup> Capital/Quality Co.'s actions and/or omissions Mr. Weathers has suffered extreme damages which continue to flow from the breach. At this point in time I estimate the following damages:

Loss of Use – the reasonable cost of a rental replacement of the damaged truck (8/1/18 to present approximately 30 weeks x \$1000 plus estimated insurance of \$500 per week)	\$ 45,000.00
Reimbursement for trip from Albuquerque to Atlanta	\$ 500.00
Loss of contract with Fed Ex Custom Critical (\$15,000.00 per month x 8; minus previous payment of \$16,000.00)	\$104,000.00
Losses due to business interruption fixed costs, extra expenses to keep the business running	\$100,000.00
Loss of opportunities with Fed Ex, Ratheon, and other companies for a year	\$100,000.00
Emotional distress and anguish	\$ 50,000.00
Punitive Damages	\$ 50,000.00
Estimated Attorney's fees should this matter go to trial	\$ 50,000.00
	<b>\$499,500.00</b>

I should advise you that Mr. Weathers is willing to accept the amount of **\$250,000.00** to completely settle this matter if the settlement occurs within the next 30 days.

Finally, I enclose a courtesy copy of my Complaint to be filed in the Second Judicial District Court, County of Bernalillo, New Mexico. As you can see in the Complaint, in addition to counts for

negligence and breach of contract against Circle K, the Complaint also includes breach of contract and bad faith counts against Protective Insurance and a bad faith claim against 19<sup>th</sup> Capital/Quality Co. I would appreciate it if each of you would let me know if you will be able, as agents and/or counsel, to accept service for your respective companies.

I appreciate your cooperation in this matter; and I look forward to working with you to resolve Mr. Weathers' claim.

Sincerely,

A handwritten signature in black ink, appearing to read "Tommy E. Jewell", with a stylized, cursive script.

Tommy E. Jewell

/TEJ

c (w/enclosure): Timothy Weathers